

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

ALPHONSO WARD

PLAINTIFF

V.

CIVIL ACTION NO.2:06CV107-WAP-JAD

BOLIVAR COUNTY REGIONAL
CORRECTIONAL FACILITY, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On October 3, 2006, plaintiff, appeared before the court for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

The plaintiff complains that a blood sample was taken from him without his consent, outside of the presence of his attorney, and without a proper warrant. The defendants forcibly restrained him to take the blood sample. The undersigned has reviewed the warrant for the taking of the blood and finds that it is facially valid. The Fifth Circuit Court of Appeals has held that reasonable force may be used to take a blood sample, without either an accused's consent and outside of the presence of the inmate's attorney. *U.S. v. Bullock*, 71 F.3d 171(5th Cir. 1995). With a facially valid search warrant, and Ward's admitted refusal to allow the taking of the sample without restraint, there is no violation of his constitutional rights. The undersigned recommends that the complaint be dismissed with prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten

days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 5th day of October, 2006.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE